

Department of the Army, DoD

§ 516.19

process and pleadings. There is no requirement to notify supervisors of purely private litigation.

(b) Supervisory procedures. When supervisors learn that legal proceedings in which the United States has an interest have commenced, the supervisor will forward a copy of all process and pleadings, along with other readily available information, to the SJA or legal adviser. If no legal officer is available locally, the documents will be forwarded to the SJA or legal adviser of the next higher headquarters.

§ 516.17 SJA or legal adviser procedures.

(a) Immediate notice to HQDA. When an SJA or legal adviser learns of litigation in which the United States has an interest, and it appears that HQDA is not aware of the action, the SJA or legal adviser will telephonically notify the responsible HQDA office. (See § 516.15(c)). Immediate notice is particularly important when litigation involves one of the following: a lawsuit against an employee in his individual capacity; a motion for a temporary restraining order or preliminary injunction; a habeas corpus proceeding; a judicial or administrative proceeding involving less than 60 days to file an answer; and, actions with possible Congressional, Secretarial, or Army Staff interest. For legal proceedings instituted in foreign tribunals, the SJA or legal adviser will also notify the major overseas commander concerned and the appropriate U.S. Embassy or Legation. A telephonic report to HQDA should include the following:

- (1) Title or style of the proceeding.
 - (2) Full names and addresses of the parties.
 - (3) Tribunal in which the action is filed, date filed, docket number, when and on whom service of process was made, and date by which pleading or response is required.
 - (4) Nature of the action, amount claimed or relief sought.
 - (5) Reasons for immediate action.
- (b) Transmission of process, pleadings, and related papers. Unless instructed otherwise by HQDA, the SJA or legal adviser will FAX or mail HQDA a copy of all process, pleadings, and related papers. Use of express mail

or overnight delivery service is authorized.

(c) Notice to U.S. Attorney. If the legal proceeding is instituted in the United States, the SJA or legal adviser, unless instructed otherwise by HQDA, will notify the appropriate U.S. Attorney and render assistance as required.

§ 516.18 Litigation alleging individual liability.

See subpart D for procedures to follow when DA personnel, as a result of performance of official duties, are either sued in their individual capacities or face criminal charges.

§ 516.19 Injunctive relief.

(a) General. Plaintiffs may attempt to force government action or restraint in important operational matters or pending personnel actions through motions for temporary restraining orders (TRO) or preliminary injunctions (PI). Because these actions can quickly impede military functions, immediate and decisive action must be taken.

(b) Notification to HQDA and U.S. Attorney. The SJA or legal adviser will immediately notify Litigation Division or other appropriate office at HQDA when a motion for TRO or PI has been, or is about to be, filed. The SJA or legal adviser will also notify the responsible U.S. Attorney.

(c) Actions by SJA or legal adviser. The SJA or legal adviser will assist the DOJ or DA attorney responsible for the litigation. Installation attorneys or support personnel should begin accumulating relevant documentary evidence and identifying witnesses. If requested, installation attorneys will prepare a legal memorandum concerning the motion, giving particular attention to the following issues relevant to a court granting injunctive relief:

- (1) Plaintiff's likelihood of success on the merits.
- (2) Whether plaintiff will be irreparably harmed if injunctive relief is not granted.
- (3) Harm to defendant and other parties if injunctive relief is granted.
- (4) The public interest.